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HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Second periodic report of States parties due in 1987

GUYANA

[1 February 1999]

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Introduction

1. The Government of Guyana signed the International Covenant on Civil and Political Rights on 22 August 1968 and ratified it on 15 February 1977. On 10 May 1993 Guyana acceded to the Optional Protocol to the Covenant and also declared that it recognized the competence of the Human Rights Committee set up under the provisions of Part IV of the Covenant.

2. Guyana's initial report (CCPR/C/4/Add.6) under the provisions of article 40 of the Covenant was submitted on 20 March 1981 and considered by the Committee at its fifteenth session in 1982 (see A/37/40, paras. 249-264).

3. Guyana's second periodic report became due on 10 April 1987, five years after the consideration of its initial report, and covers the period from 1982 to 1987. The present report seeks to provide information on the extent to which the rights enshrined in the Covenant have been realized in Guyana during that period.

4. Regarding the submission of general information, the Human Rights Committee is referred to the core document (HRI/CORE/1/Add.61).

Article 1

The right to self-determination

5. The Human Rights Committee is referred to article 1 of Guyana's initial report on the International Covenant on Economic, Social and Cultural Rights (E/1990/5/Add.27).

Article 2

Respect for human rights

6. The rights recognized in the Covenant are guaranteed by law without distinction in respect of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The Government of Guyana has progressively adopted legislation to enhance those laws already in existence.

7. With respect to birth, The Children Born Out of Wedlock (Removal of Discrimination) Act of 1983 is one example of legislation which gives effect to article 30 of the Constitution of the Cooperative Republic of Guyana. This article provides for the same legal rights and legal status for children born out of wedlock as for those who are born in wedlock. This Act is now being revisited by the Ministry of Labour, Human Services and Social Security in view of present difficulties encountered in its full implementation.

8. The Office of the Ombudsman also helps in promoting respect for human rights. The Ombudsman is constitutionally appointed by the President after consultations with the Minority Leader. The Ombudsman is empowered to conduct investigations and make recommendations in respect of complaints received in relation to any action taken by the President, his/her ministers, officers or members of government administrative bodies.

9. Once a complaint is made to the Ombudsman it is usually forwarded to the relevant government body or authority for their comments. If it is found that the complaint was justified, the Ombudsman may make a recommendation for a remedy to be applied. Should the relevant authority refuse to accept the recommendations, the Ombudsman may make a special report to the National Assembly on the matter. The complainant is usually informed of the results of the Ombudsman's investigations.

10. While there are still perceived elements of discrimination in society this is not sanctioned by any legislative measures. It may be observed that a particular race or ethnic group is concentrated in certain parts of the country. This may be explained by the country's history as a colony and the pattern of early settlements.

Article 3

Equality of men and women

11. In Guyana men and women are considered equal. Article 29 (1) of the Constitution of the Cooperative Republic of Guyana provides for the equal rights of men and women and the same legal status in all spheres of political, economic and social life. It also condemns as illegal all forms of discrimination against women on the basis of their sex. This equality extends to the courts and tribunals of the country.

12. Guyana's national policy on women is reflected in international obligations undertaken as evidenced, inter alia, by its ratification of the Convention on the Elimination of All Forms of Discrimination against Women in 1980.

13. There is still a disparity in women's participation in public life and their representation at key levels when compared to men in the same categories. For a more detailed analysis of women's representation in the society and a list of legislation adopted on women's rights, please see the appendix (available for consultation at the secretariat) which is an extract from a publication by the Ministry of Labour, Human Services and Social Security entitled Changes in the Situation of Women in Guyana: 1980-1993 (abridged version).

Article 4

Derogations from obligations under the Covenant

14. Between 1982 and 1987 there were no declared public emergencies which threatened the life of the nation and which would have caused the Government of Guyana to take measures derogating from its obligations under the Covenant.

Article 5

Destruction and restriction of and derogations from any of the rights and freedoms recognized in the Covenant

15. Articles 138-149 of the Constitution provide for the protection of fundamental rights and freedoms of the individual. These are the rights to: life; personal liberty; protection from slavery and forced labour; protection from inhuman treatment; protection from deprivation of property; protection against arbitrary search or entry; provisions to secure protection of the law; freedom of conscience; freedom of expression; freedom of assembly and association; freedom of movement; protection from discrimination on the grounds of race etc. There are, however, inherent restrictions on the enjoyment of these rights. They include provisions reasonably required in the interest of defence, public safety, public order, public morality and public health.

16. In this regard the bearing of arms by members of the Police Force and citizens is regulated by the Firearms Act, chapter 16:05 of the Laws of Guyana. This Act provides for the production of firearms for registration; the supervision of the importation of firearms and ammunition; and the regulation of the purchase, possession, manufacture and sale of certain firearms and ammunition and other transactions.

Article 6

The right to life

17. Every citizen of Guyana is recognized as part of the human family and is entitled to the fundamental rights and freedom of the individual. There rights and freedoms are enshrined in the Constitution of Guyana to which all other laws, rules and ordinances must conform without prejudice to individuals with regard to race, place of origin, political opinion, colour, creed or sex. This legislative position has not changed during the period under consideration.

18. Article 138 (1) of the Constitution states that: "No person shall be deprived of his life intentionally save in execution of the sentence of a Court in respect of an offence under the laws of Guyana of which he has been convicted". In this regard, under sections 100 and 317 respectively of the Criminal Law (Offences) Act, chapter 8:01 of the Laws of Guyana, the death sentence can be imposed only by a judge of the High Court after trial and only for the offences of murder and treason. Under the provisions of section 163 of the Criminal Law (Procedure) Act, chapter 10:01 of the Laws of Guyana, the death sentence cannot be imposed on a pregnant woman or anyone under the age of 18 years. Under section 213 of chapter 10:01 the President is empowered to grant a pardon to any offender or to have the death sentence commuted to life imprisonment. A person convicted of murder and sentenced to death has the right of appeal to the Guyana Court of Appeal.

19. In every case where a person is sentenced to death and admitted into prison, he is informed of his right to appeal against that sentence, and facilities are provided whereby the appeal is made within the specified time.

Where all appeals have been exhausted and the sentence of death is upheld, the prisoner may, by petition, seek clemency through the Advisory Council on the Prerogative of Mercy. The Advisory Council meets frequently to consider such petitions and advise the President whether he should use his executive powers in the grant of clemency to the petitioner.

20. During the period January 1981 to December 1986, 46 prisoners were sentenced to death by the Supreme Court of Guyana. Appeals were made against all the sentences and convictions. These appeals were heard and the decisions of the Court of Appeal were as follows:

Appeals dismissed, conviction and sentence affirmed	23
Appeal allowed, conviction and sentence set aside	14
Appeal allowed, retrial ordered	5
Appeal allowed, sentence commuted to life imprisonment	1
Appeal allowed, sentence commuted to imprisonment for 15 years	1
Died awaiting results of appeal	2
Total	46

21. Those whose sentences and convictions were affirmed by the Court of Appeal petitioned the Advisory Council on the Prerogative of Mercy for clemency with the following results:

Sentence of death commuted to life imprisonment	9
Sentence and conviction upheld	5
Decision on petition after 1986	9

22. Since Guyana attained its independence no female (pregnant or not) or person under the age of 18 years has been executed.

23. Taking into consideration the provisions of the Constitution, judicial processes, frequency of executive clemency, consideration of females and young persons and the small percentage of those convicted of murder who suffered death, Guyana has presented a commendable record of protecting the individual's right to life within a legal framework. However, there were a number of undocumented cases of shootings by plain clothes policemen. Persons shot were labelled "wanted criminals".

Article 7

Protection against cruel, inhuman or degrading treatment or punishment

24. There are provisions at the national level which give force to this article such as article 141 of the Constitution which states that "No person shall be subjected to torture or to inhuman or degrading punishment or other treatment". The protective provision of article 141 is enforced even in a state or threat of war and other occasions where a state of emergency is declared by the President. When it is obvious to an individual, including any person lawfully detained, that his freedom under article 141 is being or likely to be violated, that person may apply to the High Court for redress without prejudice to any other section with respect to the same matter.

25. The High Court has original jurisdiction to hear such matters and make such order and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of the provisions of article 141. Parliament, empowered by article 153, may confer upon the High Court powers in addition to those derived by the Constitution, if it appears to Parliament to be necessary and desirable for the purpose of enabling the High Court to exercise more effectively the jurisdiction conferred upon it by those articles for the preservation of all fundamental rights and freedoms.

26. To ensure that the provisions of article 141 of the Constitution are observed, laws which dictate the conduct of law enforcement personnel have been enacted. These include the Police Discipline Act of 1975 which is described as "An Act to enable members of the Police Force to appeal to the Police Service Commission in disciplinary matters pursuant to article 108 (5) of the Constitution and to make provision for the exercise of disciplinary powers in the Police Force". Part 111 of the Act relates in particular to discipline of any member of the force. Section 4 (b) (ii) of the Act states that any member of the force who is guilty of any unlawful or any unnecessary use of authority, that is to say, uses any unnecessary violence against any prisoner or other person with whom he may be brought into contact in the execution of his duty, commits an offence against discipline and is liable to such punishment as may be imposed upon him by the Commissioner of Police or disciplinary authority in accordance with the provisions of the Act. Depending on the gravity of the offence, sanctions range from reprimand to dismissal. Police officers may be brought before the courts when there is evidence that a criminal offence has been committed.

27. This position is supported by section 72 of the Defence Act, chapter 15:01, which states that: "Every person subject to military law under the Act who is guilty of disgraceful conduct of a cruel, indecent, or unnatural kind shall on conviction by Court Martial be liable to imprisonment for two years or any less punishment prescribed by the Act."

28. The application of these laws is taken into account during the training and service of members of the Disciplined Forces.

29. There are also Prison Rules which govern the actions of personnel in these institutions. Prison rule 172 states: "No Prison Officer shall strike a prisoner except in self defence, or in defence of another, and in such case

no more force shall be used." Prison rule 251 (a) states: "Discipline and order shall be maintained with firmness but with no more restrictions than is required for safe custody and well ordered community life." Prison rule 168 (3) states: "At all times the treatment of prisoners shall be such as to encourage their self-respect and a sense of personal responsibility."

30. Violations of these rules by a prison officer can lead to sanctions against the defaulter and, depending on the gravity of his offence, penalties ranging from reprimand to dismissal. Where the offence is grave enough to be classified as a criminal offence, the matter is decided by the courts.

31. Inmates whose rights and freedoms are violated, in addition to the aforementioned sources of redress, may report such breaches and seek redress from the Visiting Committee, the Ombudsman and the Minister of Home Affairs who are empowered to have the complaints investigated and to recommend that corrective measures be taken.

32. The extent to which these provisions are enforced remains unconfirmed as record-keeping for the period was very poor. It should also be noted that no authority was found which protects inmates of hospitals (general or psychiatric) from the administration of drugs which could result in prolonged periods of pain, or experimentation with drugs using human patients as subjects. However, this is not to suggest that persons are used in this way. There have been no reported cases of persons being used in experiments or being administered drugs which result in prolonged periods of pain.

33. Corporal and other punishment in schools inflicted by teachers have not yet been addressed by the law-makers. It should be noted, however, that this system of punishment in schools is usually administered by the head of a school or a senior teacher. If there were any derogations the Ministry of Education would investigate the issue.

Article 8

Forced labour

34. Article 140 (2) of the Constitution states that: "No person shall be required to perform forced labour." Article 140 (3) excludes from the definition of "forced labour", any labour required as a consequence of a sentence imposed by an Order of the Court and work which may be necessitated by a national disaster.

35. Brief periods of community service have been imposed by the courts on first offenders as an alternative to imprisonment. This is governed by the Extra-Mural Work Act, chapter 11:02 of the Laws of Guyana, which is described as "an Act to provide a system whereby offenders guilty of minor offences may be made to perform extra-mural work instead of serving terms of imprisonment". Such work is usually supervised.

36. Criminal offenders are no longer sentenced to hard labour but a period of imprisonment during which work is considered an integral part of the rehabilitation process. The type of labour to which a prisoner is subjected is determined in accordance with his age, sex, state of health, physical

ability, aptitude and the opportunity to develop or improve on a particular trade or craft. The broad objective of a prisoner's rehabilitative work programme is to develop in him the desire to engage in productive endeavours by which he may gain marketable skills that could be translated into income for himself upon his release from prison.

37. While no person in Guyana is required to perform forced labour, during the period under review civil servants were asked to work at Hope Estate, a coconut plantation located some miles outside the capital city. There were no explicit orders to civil servants, but many felt that their jobs would be jeopardized if they did not comply with "requests" to work at the plantation.

Article 9

Liberty and security of the person

38. Article 139 (1) of the Constitution states that: "No person shall be deprived of his personal liberty save as may be authorized by law." While article 139 (1) (e) recognizes that a person may be arrested and detained "upon reasonable suspicion of his having committed, or being about to commit a criminal offence under the laws of Guyana", article 139 (3) serves to ensure against arbitrary arrest and detention by providing for the following: "Any person who is arrested or detained shall be informed as soon as reasonably practicable, in a language that he understands, of the reasons for his arrest or detention and shall be permitted, at his own expense, to retain and instruct without delay a legal adviser of his own choice, being a person entitled to practise in Guyana as an Attorney-at-Law and to hold communication with him."

39. Article 139 (4) states:

> "Any person who is arrested or detained
>
> "(a) For the purpose of bringing him before a court in execution of the order of a court; or
>
> "(b) Upon reasonable suspicion of his having committed or being about to commit a criminal offence, and who is not released, shall be brought before a court as soon as is reasonably practicable; and if any person arrested or detained upon reasonable suspicion of his having committed or being about to commit a criminal offence is not tried within a reasonable time, then, without prejudice to any further proceedings which may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial."

40. The aforementioned provisions provide a suspect with the right to legal counsel, to be brought before a court as soon as reasonably practicable after arrest and to bail. If there is no trial within a reasonable time, article 139 (5) provides for a person who has been unlawfully arrested or detained to be compensated. This article states that: "A person who is

unlawfully arrested or detained by any other person shall be entitled to compensation from that other person." It should be noted that a person who is unlawfully detained can apply to the High Court for a writ of habeas corpus to be issued to secure his release.

41. The above is substantiated by Rules made by the Chief Justice and Judges of the Supreme Court of 1964. The Judges' Rules specify conditions to be followed where a suspect is detained, questioned, arrested and/or charged. It also rules on confession statements, comfort refreshment and access to a legal adviser. Further, if it is found that the Judges' Rules have been breached, any statement given by an accused person may be excluded from evidence in a court of law or a voir dire is conducted.

42. Over the years the Judges' Rules have served to safeguard innocent persons from being convicted of offences for which they were not responsible. The Rules also form the basis for censuring investigating officers whenever there are established breaches.

43. The Criminal Law (Procedure) Act, chapter 10:01 of the Laws of Guyana, further secures the right of citizens to personal liberty. Article 81 of the Act states:

> "Where the offence with which the accused person is charged is a misdemeanour punishable with fine or with imprisonment for a term not exceeding two years, the accused person shall be entitled to be admitted to bail as hereinafter mentioned;" and
>
> "Where the offence with which the accused person is charged is a misdemeanour punishable otherwise than as in this section before mentioned, or, subject to the exceptions hereafter in this section mentioned, is a felony, the magistrate may, in his discretion, admit the accused person to bail as hereinafter mentioned."

44. Article 81 of chapter 10:01 provides for an accused person charged with a misdemeanour which is punishable with imprisonment for a term of two years or less a right to bail and also for the magistrate to grant bail where the accused is charged with a felony or misdemeanour punishable with more than two years' imprisonment according to his discretion.

45. If a person is arrested by the police without warrant, section 21 of the Police Act, chapter 16:01, provides for the following:

> "When a person is arrested without a warrant he shall be taken before a magistrate as soon as practicable after he is taken into custody, provided that any member of the force for the time being in charge of a police station may inquire into the case and
>
> "(a) Except where the case appears to such member of the force to be of a serious nature, may release such person upon his entering into a recognizance, with or without sureties, for a reasonable amount to appear before a magistrate at the time, date and placement in the recognizance; and

"(b) If it appears to such member of the force that such inquiry cannot be completed forthwith he may release such person on his entering into a recognizance, without surety for a reasonable amount, to appear at such police station and at such times as are mentioned in the recognizance, unless he previously receives notice in writing from the officer in charge of that police station that his attendance is not required and any such bond may be enforced as if it were a recognizance conditional for the appearance of the said person before the magistrate."

46. Section 21 of chapter 16:01 therefore obligates the police to bring a person arrested without warrant before a magistrate as soon as practicable after his arrest and, except in cases of a serious nature, the arrested person may be put on station bail to appear in court or at the station if investigations cannot be completed forthwith.

47. During the period under consideration, there were a number of arbitrary arrests. These were largely politically motivated and were directed at members of the then existing opposition parties and their perceived supporters. Prominent among those arrested were supporters of the Working Peoples' Alliance.

Article 10

Persons deprived of their liberty

48. Persons deprived of their liberty by law are recognized as part of the human family and are entitled to the fundamental rights and freedoms of the individual as enshrined in the Constitution of Guyana. The Guyana Prisons Act of 1957, Prison Rules and Ordinances conform to the provisions of the Constitution and are implemented without discrimination. The Prisons Act incorporates almost all the standards contained in the United Nations Standard Minimum Rules for the Treatment of Prisoners.

49. As far as accommodation permits, prisoners who are awaiting trial are separated from convicted prisoners. During the period under consideration this was possible in prisons located in Lusignan and New Amsterdam, some miles outside the capital city, Georgetown. However, at the Georgetown Prison such segregation is not always possible. There has been a proposal to increase the facilities of the prison but this is still awaiting the availability of funds.

50. Persons below the age of 16 years are not admitted into prison but remanded to institutions such as the "New Opportunity Corps" which is located in the county of Essequibo and the "Belfield Girls' School" located on the east coast of Demerara. The two institutions provide opportunities for vocational training, training in sports and other activities which focus on preparing the inmates for a more productive life once they are released. If a person is above 16 years but below 18 years old and is admitted into prison, he is segregated from the adult prison population.

51. The Juvenile Offenders Act, chapter 10:03, governs the position of young persons who are accused of committing an offence. This Act provides for the following:

"(1) A court on remanding or committing for trial a child or young person who is not released on bail, shall, instead of committing him to prison, commit him to custody in a place of detention provided under the Act and named in the commitment, to be there detained for the period for which he is remanded or until he is thence delivered in due course of law; provided that in the case of a young person it shall not be obligatory on the court so to commit him if the court certifies that he is of so unruly a character that he cannot be safely so committed, or that he is of so depraved a character that he is not a fit person to be so detained.

"(2) A commitment under this section may be varied or, in the case of a young person who proves to be of so unruly a character that he cannot be safely detained in such custody, or to be of so depraved a character that he is not a fit person to be so detained, revoked by any court acting in or for the place in or for which the Court made the order acted, and if it is revoked the young person may be committed to prison. The Act also states categorically that no child or young person shall be sentenced to imprisonment."

52. A programme for the rehabilitation of prisoners has been in effect since the 1970s. It caters for the social rehabilitation of the prisoner by providing instruction in basic skills with the aim of developing in him a sense of responsibility and to equip him for the working environment upon his release. The Prison Officers' Training School provides Prison Trade Instructors who are qualified in such fields as agriculture, engineering, home economics, carpentry, masonry and plumbing. They normally instruct inmates in the theoretical and practical aspects of a particular trade.

53. Most prisons have a library which is serviced by the National Library. In addition, prisoners are provided with facilities for recreational activities.

54. It should be noted that the services of the prisons are constrained by the limited financial and human resources available. However, to the extent possible, the authorities of the prisons have endeavoured to ensure that the rights of prisoners are protected.

55. There is a problem of overcrowding in prisons which the authorities have endeavoured to address. In this regard some police stations, though not designated remand centres under the Prisons Act, were used for the detention of prisoners. The East La Penitence police station, which is located in Georgetown, was used as such for female prisoners. For the period under review, conditions were cramped and segregation between remand and convicted female prisoners was not always possible. Further, it should be noted that the Georgetown Prison, which is the main prison and is located in the capital city, was constructed over 150 years ago and has not expanded to keep pace with the increasing prison population.

56. Despite every effort to ensure the well-being of prisoners, there are still unfortunate deaths in prisons many of which resulted from chronic illnesses from which the prisoners suffered when they were admitted into prison. The following is a report from the Director of Prisons which gives statistics for the years 1982-1987:

1982

Cause of death	No. of deaths
Unknown	10
Epilepsy	2
Orchitis with severe anaemia	1
Cardiorespiratory failure	1
Haemorrhage from stab wounds	1
Total 15	

1983

Cause of death	No. of deaths
Acute poisoning	1
Amoebic dysentery	1
Shock due to haemorrhage from bleeding duodenal ulcer	2
Congestive cardiac failure	1
Enteritis	1
Ischaemic heart disease	1
Cardiac respiratory failure	1
Stab wounds	1
Total 9	

1984

Cause of death	No. of deaths
Dehydration due to diarrhoea	1
Congestive cardiac failure	1
Bronchopneumonia	1
Cerebral haemorrhage due to hypertension	1
Total 4	

1985

Cause of death	No. of deaths
Acute encephalitis	1
Acute pancreatitis	1
Tuberculosis	1
Bullet wound	1
Carcinoma of the lungs	1
Hepatitis cirrhosis	1
Congestive heart failure	1
Total 7	

1986

Cause of death	No. of deaths
Malnutrition and severe anaemia	1
Tuberculosis	1
Peptic ulcer	1
Peritonitis due to perforation of peptic ulcer	1
Unknown	1
Total 5	

1987

Cause of death	No. of deaths
Pulmonary tuberculosis malnutrition	1
Lobar pneumonia Guillain Barre Syndrome	1
Pulmonary oedema	1
Chronic anaemia	2
Bleeding peptic ulcer	1
Cancer of the pancreas	1
Acute renal failure	1
Internal haemorrhage	1
Hypertension	1
Bronchopneumonia	1
Acute colitis	1
Total 12	

Article 11

Imprisonment on the ground of inability to fulfil a contractual obligation

57. In Guyana imprisonment is a sanction imposed for a violation of criminal law. The inability to fulfil any contractual obligation should therefore not result in imprisonment.

Article 12

Liberty of movement and freedom to choose one's residence

58. Article 148 (1) of the Constitution states that: "No person shall be deprived of his freedom of movement, that is to say the right to move freely throughout Guyana, the right to reside in any part of Guyana, the right to enter Guyana, the right to leave Guyana and immunity from expulsion from Guyana." There are, however, instances of derogations from this principle such as an Order of Court restraining a person from leaving the jurisdiction. Persons who are contracted to the Government also have limited movement with respect to travel overseas.

59. Citizens and residents are free to move or settle in any part of the country without any restrictions provided that the areas are approved housing

areas. An exception to this principle is the rules governing Amerindian lands which are not for sale and must remain within the Amerindian community. Also, a person must first obtain permission in writing from the Chief Interior Development Officer before he enters Amerindian settlements. Under the regime of the People's National Congress, there were usually administrative delays by the Ministry of Interior Development in granting permission to leaders of opposition parties, their activists and Church leaders to visit Amerindian communities.

60. The right of aliens to enter Guyana is governed by the immigration laws of Guyana. In some instances a visa is needed, depending on relations between the Government of Guyana and the Government of the person's country of origin.

Article 13

Expulsion of aliens

61. The expulsion of aliens is governed by the Immigration Laws and the Expulsion of Undesirables Act, chapter 14:05 of the Laws of Guyana, which governs the treatment of undesirables. The latter Act is defined as "an Act to make provisions for preventing the entry of undesirable persons into Guyana and for the expulsion of undesirable persons from Guyana".

62. In the Act "expulsion order" means an order made by the President

(a) Requiring an undesirable person to leave Guyana; or

(b) Requiring an undesirable person to leave Guyana within a time fixed by the Order and thereafter to remain out of Guyana;

(c) Directing that an undesirable person be apprehended and deported from Guyana.

An "undesirable person" means any person, other than a citizen of Guyana, in respect of whom the President deems it conducive to the public good to make an expulsion order.

63. This Act is still in force and continues to regulate the status of any person deemed undesirable who wishes to enter the country.

64. Extradition treaties permit the Government of Guyana to extradite Guyanese or aliens who have committed crimes abroad to countries where there is a bilateral treaty in force once cogent evidence has been submitted to a competent court. Anyone accused of committing an extraditable offence has an opportunity to retain counsel and defend himself against such extradition.

Article 14

Equality of all persons before the courts and tribunals

65. All persons are equal before the courts and tribunals of the country. This equality obtains irrespective of race, colour or creed. Article 144 of

the Constitution guarantees an accused person a fair hearing within a reasonable time by an independent court established by law. Article 144 states as follows:

"(1) If a person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

"(2) It shall be the duty of the court to ascertain the truth in every case provided that every person who is charged with a criminal offence:

"(a) shall be presumed to be innocent until he is proved or has pleaded guilty;

"(b) shall be informed as soon as reasonably practical, in a language that he understands and in detail, of the nature of the offence charged;

"(c) shall be given adequate time and facilities for the preparation of his defence;

"(d) shall be permitted to defend himself before a court in person or a legal representative of his own choice;

"(e) shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and

"(f) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge."

66. Article 144 (5) states that the Constitution recognizes and gives effect to the pleas of the bar of autrefois acquit and autrefois convict.

67. Every person convicted of a criminal offence has a right to appeal to a higher tribunal. Section 12 of the Court of Appeal Act, chapter 3:01, states as follows:

"A person convicted on indictment in the High Court on a day after this Section comes into operation may appeal under this Part to the Court of Appeal:

"(a) against his conviction, on any ground of appeal which involves a question of law alone;

"(b) with the leave of the Court of Appeal or upon the certificate of the judge who tried him that it is a fit case for appeal against his conviction on any ground of appeal which involves a question

of fact alone, or a question of mixed fact and law, or any other ground which appears to the court or judge to be sufficient ground of appeal;

"(c) with leave of the Court of Appeal against the sentence passed on his conviction, unless the sentence is one fixed by law."

The above-mentioned provisions apply to appeals from conviction and sentence after trial by judge and jury.

68. In relation to appeals form convictions and sentences imposed after convictions by magistrates, section 3 of the Summary Jurisdiction (Appeals) Act, chapter 3:04, states: "Unless the contrary in any case is expressly provided by the Act, anyone dissatisfied with a decision of a magistrate may appeal therefrom to the Court in the manner subject to the conditions hereinafter mentioned."

69. In Guyana, the law does not provide for compensation to be paid to persons who have suffered punishment as a result of convictions which have later been quashed or in respect of which pardons have been granted. However, where convicted persons have appealed, bail is usually granted provided that the particular appellant can show that he would have served a substantial part of his sentence by the time his appeal comes up for hearing and that his appeal has merit.

70. For the period under review, there were no legal aid services available. However, a person on trial for murder would have automatically been granted free legal counsel by the State if there was a need.

Article 15

Commission of an act that does not constitute a criminal offence

71. Article 144 (4) of the Constitution states that: "No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute an offence, and no penalty shall be imposed for any criminal offence that is more severe in degree and nature than the most severe penalty that might have been imposed for that offence at the time when it was committed." There are therefore constitutional guarantees against the retroactive creation of offences and of greater severity of sentence.

Article 16

Recognition as a person before the law

72. Everyone is recognized as a person before the law with the exception of embryos and foetuses which, under common law, are not recognized as legal persons.

Article 17

Interference in private life

73. Pursuant to article 143 of the Constitution no person shall be subjected to the search of his person or his property or entry by others on his premises except with his own consent. The article further states that nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of its provisions to the extent that the law in question makes provision:

> "(a) that is reasonably required in the interest of defence, public safety, public order, public morality, public health, town or country planning, the development or utilization of mineral resources, or the development or utilization of any other property in such manner as to promote the public benefit;
>
> "(b) that is reasonably required for the purpose of protecting the rights or freedom of other persons;
>
> "(c) that authorizes an officer or agent of the Government of Guyana, or of a local democratic organ or of a body corporate established directly by law for public purposes to enter on the premises of any person in order to inspect those premises or anything for the purpose of any tax, duty, rate, cess or other impost or in order to carry out work connected with any property that is lawfully on those premises and that belongs to that Government, local democratic organ or body corporate, as the case may be for, or for the purpose of obtaining or verifying information required for compiling national statistics or required for the purposes of planning, management and development of the national economy; or
>
> "(d) that authorizes, for the purpose of enforcing the judgement or order of a court in any proceedings, the entry upon any premises by order of a court."

74. During the period under consideration there were a number of searches under the provisions of the National Security (Miscellaneous Provisions) Act, chapter 16:02 of the Laws of Guyana, which were considered to be without basis and carried out with unnecessary force by members of the police force. Searches were frequent and extensive and directed mainly at opposition figures and their supporters in the Peoples' Progressive Party (PPP) and the Working Peoples' Alliance (WPA). They numbered approximately 50 and 115 respectively in 1981 and 1982. In many cases searches were carried out without a warrant and valuable items would be reported missing by householders.

Article 18

Freedom of thought, conscience and religion

75. Article 145 protects the individual from being hindered in the enjoyment of his freedom of conscience, which means freedom of thought and religion or belief and freedom, either alone or in community with others, both in public

and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance, except where it is provided by law that such rights are not considered violated in the interest of:

(a) National defence, public safety, public order, public morality or public health; or

(b) For the purpose of protecting the rights and freedom of other persons, including the right to observe and practise any religion without the unsolicited intervention of members of any other religion; or

(c) With respect to standards or qualifications to be required in relation to places of education including any instruction (not being religious instruction) given at such places.

76. Under the Independence Constitution of 1966, religious communities were entitled, at their own expense, to establish and maintain places of education and to manage any place of education which they wholly maintained. This provision was swept away by the 1980 Constitution and education became the sole responsibility of the Ministry of Education.

Article 19

The right to hold opinions without interference

77. Article 146 of the Constitution protects the freedom of expression, that is to say, freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference and freedom from interference with a person's correspondence provided that the expression of such freedom does not harm national defence, public safety, public order, public morality and public health, or the reputation, rights and freedoms of other persons, the private lives of persons involved in legal proceedings, information received in confidence, the authority and independence of the courts, the technical administration and operation of telephones, telegraphs, the post or radio and television broadcasting fairness and balance in the dissemination of information to the public, or harm a corporate body established on behalf of the Government of Guyana.

78. While these constitutional provisions remained unchanged, the early 1980s were characterized by a State media dominated by the People's National Congress (PNC) and discriminatory practices against opposition publications. These included the Catholic Standard, the Dayclean and the Mirror. The Government at that time was the sole importer of newsprint; this position was effectively used to limit import licences and the availability of newsprint to others, thus leading to constraints on the publication of views other than those of the Government. Following an agreement by the People's Progressive Party to enter into top-level talks with the PNC Government, the PPP-run Mirror newspaper began to receive newsprint which was part of a gift to the PNC Government. No other independent newspaper benefited.

79. Libel suits have also been used as tools to limit the freedom of expression of opposition publications: the Mirror, Catholic Standard and Open Word were subjected to this type of action.

80. Between 1982 and 1983 there were approximately eight unexpected dismissals. This number incluued University of Guyana lecturers and secondary school teachers who were known to have voiced opinions that were critical of the PNC Government.

Article 20

Propaganda for war

81. Prohibition against propaganda for war has not been found in the statutes. However, the advocacy of national, racial and religious hatred which may constitute incitement to discrimination, hostility or violence has proven to be disastrous to the nation. Thus, it has been recommended that the Public Order Act be amended to include laws which would make such advocacy a crime.

82. Section 10 of the Public Order Act, chapter 16:03 of the Laws of Guyana, prohibits the use of words or conduct intended to provoke a breach of the peace at public meetings. The formation of quasi-military organizations is also prohibited under the Act. Section 8 of chapter 16:03 states that members or adherents of any association of persons, whether incorporated or not who are:

> "(a) organized or trained or equipped for the purpose of enabling them to be employed in usurping the functions of the police or the Guyana Defence Force; or
>
> "(b) organized and trained or organized and equipped either for the purpose of enabling them to be employed for the use or display of physical force in promotion any political object, or in such manner as to arouse reasonable apprehension that they are organized and either trained or equipped for that purpose, then any person who takes part in the control or management of the association or in so organizing or training as aforesaid any number of adherents thereof, shall be guilty of an offence under this section."

Article 21

The right of peaceful assembly

83. The right of peaceful assembly and freedom of association is enshrined in article 147 of the Constitution which states:

> "Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to political parties or to form or belong to trade unions or other associations for the protection of his interest."

84. This right is enjoyed by Guyanese subject to other legal provisions which protect the interests of the State and the individual rights of its citizens. During the period under review, however, the opposition parties and religious organizations with a political bias had their meetings disrupted by different tactics, including harassment by the police in granting permission to hold meetings and the actual break-up of meetings by thugs. The Working People's Alliance brought a constitutional action against the Commissioner of Police on the question of refusals of permission to hold public meetings at various locations. The Commissioner testified that his decision was based on the "volatile social climate" and the WPA's case was dismissed. Other organizations affected by this policy included the Guyana Council of Churches when it attempted to hold a preparatory meeting for its Annual General Meeting and the opposition PPP. The latter wrote to the Commissioner of Police in 1985 protesting the unwillingness of the police to prevent an authorized PPP meeting from being disrupted by thugs from the ruling PNC party.

Article 22

The right to freedom of association with others

85. Article 147 of the Constitution provides for the protection of assembly and association. This right is recognized and realized in Guyana with respect to membership in political parties, trade unions, religious organizations and other non-governmental organizations. With respect to membership in trade unions, Guyanese are allowed to form trade unions and to become members pursuant to the provisions of the Trade Unions Act, chapter 98:03 of the Laws of Guyana.

86. In this regard, the Human Rights Committee is further referred to article 8 of Guyana's initial report on the International Covenant on Economic, Social and Cultural Rights.

Article 23

The family

87. The Committee is referred to article 10 of Guyana's initial report on the International Covenant on Economic, Social and Cultural Rights.

Article 24

Protection of the child

88. The Committee is referred to the above-mentioned article.

Article 25

The right to take part in the conduct of public affairs

89. Citizens of Guyana presently enjoy the right to participate in public affairs directly or through freely chosen representatives, to elect or be elected during free and fair elections and on general terms to serve as public officials of Guyana.

90. Article 59 of the Constitution states: "Subject to the provisions of Article 159, every person may vote at an election if he is of the age of 18 years or upwards and is either a citizen of Guyana or a Commonwealth citizen domiciled in Guyana." Article 60 (1) states: "Election of members of the National Assembly shall be by secret ballot."

91. The period under review was a questionable one in respect of free and fair elections under the regime of the People's National Congress. In 1985, members of a Mission of Inquiry into Political Freedom in Guyana were refused entry into Guyana. This Mission, which had been invited by Churches, trade unions, the Guyana Bar Association and the Guyana Human Rights Association, comprised Americas Watch, the United Kingdom Parliamentary Human Rights Group and the International Commission of Jurists. The representatives of the Parliamentary Human Rights Group and Americas Watch eventually held meetings in neighbouring Trinidad and Tobago with persons from political parties, trade unions, the Bar Association and human rights activists.

92. At general elections in 1985, there were numerous allegations of rigging; when the PNC retained power once again, it was generally felt that the results were farcical.

Article 26

Equality before the law

93. All persons are considered equal before the law irrespective of their race, origin, creed or social position. It is noted, however, that the indigenous population does not enjoy this right fully because of a lack of interpretation and translation facilities. Also, some are unaware of the facilities and services which may be accessed.

Article 27

The rights of ethnic minorities

94. All minorities, whether ethnic, religious or linguistic, are permitted to enjoy their own culture, to profess and practise their own religions and to use their own language. The Chinese minority in particular are well integrated into society, as opposed to the indigenous peoples. The geographical factor, among other things, constrains the full involvement of the latter group in wider society.

Conclusion

95. It was found that in each case our Constitution and other laws were in harmony with the Covenant. It was observed, however, that no specific body of laws has been enacted to:

(a) Protect the interests of specific minorities except Amerindians;

(b) Protect inmates of general and mental hospitals from being used without their knowledge and consent in medical experiments;

(c) Regulate the infliction of corporal punishment on schoolchildren.

96. The period under review was a difficult one with a number of oppressive practices in the political, economic and social life of the country under the regime of the People's National Congress. This gradually began to change after 1985 when it became increasingly obvious to the then administration that the country could not survive alone and needed the goodwill of the international community. Throughout it all the people of Guyana have struggled to ensure that their rights as established in constitutional and other legal enactments have been maintained. This objective remains the goal of the Government and people of Guyana.